

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

CARLA K. REMY,

Plaintiff,

v.

CIVIL ACTION NO. 1:19-00422

WARDEN CARVER, FPC ALDERSON,

Defendant.

MEMORANDUM OPINION AND ORDER

By Standing Order, this action was referred to United States Magistrate Judge Dwane L. Tinsley for submission of findings and recommendation ("PF&R") regarding disposition pursuant to 28 U.S.C.A. § 636(b)(1)(B). Magistrate Judge Tinsley submitted to the court his Findings and Recommendation on December 10, 2021, in which he recommended that the district court notify Remy that her petition under 28 U.S.C. § 2241 will be characterized as a motion under 28 U.S.C. § 2255; provide her with her options under Castro v. United States, 540 U.S. 375, 383 (2003); if plaintiff agrees, recharacterize her petition as a § 2255 motion and open a separate civil action in the Charleston Division, nunc pro tunc to May 31, 2019 (the date the petition was received) for consideration of her claims thereunder by the sentencing court; and dismiss this § 2241 petition and this civil action from the docket of the court. In the event that Remy does

not agree to recharacterization, the PF&R recommended that the petition be dismissed for lack for jurisdiction.

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted fourteen days, plus three mailing days, in which to file any objections to Magistrate Judge Tinsley's Findings and Recommendation. The failure of any party to file such objections constitutes a waiver of such party's right to a de novo review by this court. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989). Plaintiff did not file objections within the requisite time nor did she indicate whether she agreed to recharacterization of her § 2241 as a § 2255.

Having reviewed the Findings and Recommendation filed by Magistrate Judge Tinsley, the court adopts the findings and recommendations as follows:

- 1) Plaintiff is hereby informed that she may have her § 2241 recharacterized as a motion to vacate under 28 U.S.C. § 2255.
- 2) **If plaintiff wishes to proceed with the filing of a § 2255, she must inform the court in writing no later than February 24, 2022.**
- 3) Plaintiff is further informed that if she agrees to recharacterize her § 2241 as a § 2255 motion, any subsequent § 2255 motion will be subject to the

restrictions on second or successive motions.


Therefore, she may wish to withdraw the motion or amend it so that it contains all the § 2255 claims she believes she has. Remy is further advised that a second or successive motion under § 2255 requires certification by the appropriate Court of Appeals, pursuant to 28 U.S.C. § 2244, that it meets a narrow set of criteria for consideration, "thus presenting an additional procedural hurdle and severely limiting the ability of the movant to mount successive challenges to his or her conviction and sentence." See 28 U.S.C. § 2255(h).

- 4) On or after February 25, 2022, this matter will be dismissed for lack of jurisdiction.

The Clerk is directed to forward a copy of this Memorandum Opinion and Order to plaintiff, pro se,* and counsel of record.

IT IS SO ORDERED this 3rd day of February, 2022.

ENTER:



David A. Faber
Senior United States District Judge

* The BOP Inmate Locator indicates that Remy is located at RRM Pittsburgh.